

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MICHAEL R. HAMLIN,)	
)	
Plaintiff)	
)	
v.)	Civil No. 03-169-B-W
)	
PRISON HEALTH SERVICES,)	
INC., et al.,)	
)	
Defendants)	

**RECOMMENDED DECISION ON MOTION FOR
TEMPORARY RESTRAINING ORDER**

Plaintiff Michael Hamlin is a prisoner serving a sentence at the Maine State Prison. He initiated this lawsuit by filing a civil rights complaint on September 25, 2003. In that complaint he named as defendants Prison Health Services, Inc., Correctional Medical Services, Inc., and a variety of state correctional officers including the Commissioner, the warden, and a collection of John and Jane Doe correctional officials and others. The first amended complaint (Docket No. 24) alleges not only constitutional deprivations under the Eighth Amendment, based upon a claim of deliberate indifference to Hamlin's serious medical needs, but also invokes this court's supplemental jurisdiction by way of a series of counts sounding in common law tort. As well, Hamlin has added a count under the Americans with Disabilities Act. Hamlin claims that all defendants were deliberately indifferent regarding their medical treatment of him because they failed to adequately address the medical issues surrounding Hepatitis C, including a claim that defendants have refused to test or treat him for "HCV infection."

On February 10, 2004, Hamlin filed a motion for temporary restraining order (Docket No. 31), seeking an order enjoining prison officials from taking disciplinary action against him for marijuana allegedly found in his cell. Hamlin claims that he was the victim of a retaliatory prison disciplinary process brought about solely because this lawsuit was pending. Hamlin abortively, and unsuccessfully, attempted to amend his complaint to include this claim of retaliation. (Docket No. 30 & 52.) Presently, Hamlin seeks injunctive relief against a Prison Unit Manager named Russell Worcester, who is not technically a named defendant. Leaving aside the rather obvious pleading defects, those being that the operative first amended complaint does not include a claim of retaliation and does not include Russell Worcester as a named defendant, I nevertheless think it is appropriate to **DENY** this motion for temporary restraining order on its merits and I, accordingly, recommend that the court do so.

Facts Giving Rise to the Claim of Retaliation

According to Hamlin he received a disciplinary write-up on January 21, 2004, based upon the discovery of marijuana in his cell. He claims that the marijuana was “planted” in his cell by prison officials in retaliation for the pending litigation. Hamlin bases his claim primarily upon the fact that Russell Worcester, a member of the administrative segregation board that heard Hamlin’s case, made a statement at the disciplinary hearing to the effect of “OK, right as if we would have planted something.” (Worcester Aff. ¶¶ 6-7). This statement arose in response to Hamlin’s claim that the marijuana found in his cell was not his and had been planted there by someone else, perhaps another inmate. After Worcester’s remark, Hamlin concluded that the marijuana must have been put there by prison officials, as part of a massive conspiracy, in

retaliation for having filed this lawsuit. From this single thread Hamlin weaves further evidentiary “proof” of the retaliatory conspiracy based upon the loss of a playstation and the loss of his prison industry jobs. These allegations he incorporates into his proposed second amended complaint and avers that they occurred after he had filed his civil rights action. (Proposed 2d Am. Compl. ¶¶ 121-123, Docket No 30 Attach. 1.)

In their responsive pleadings the defendants maintain that the loss of the playstation, occurring last November before service of the complaint, could not have been causally connected to a retaliatory conspiracy. Furthermore, Hamlin filed a grievance vis-à-vis the playstation and was reimbursed for it after the prison determined that it had been accidentally lost in a prison move. (Costigan Aff. ¶¶ 7-9). Likewise they maintain that the loss of the prison job was unrelated in any way to this lawsuit. (Worcester Aff. ¶ 12). Hamlin has not directly replied to these factual recitations except by way of his conclusory allegations that these activities were all done in retaliation for the commencement of this lawsuit.

Discussion

The First Circuit has instructed that trial courts entertaining motions for preliminary injunction “must consider (1) the likelihood of success on the merits; (2) the potential for irreparable harm if the injunction is denied; (3) the balance of relevant impositions, i.e., the hardship to the nonmovant if enjoined as contrasted with the hardship to the movant if no injunction issues; and (4) the effect (if any) of the court's ruling on the public interest. Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 102 F.3d 12, 15 -16 (1st Cir. 1996) (citing Weaver v. Henderson, 984 F.2d 11, 12 & n. 3 (1st Cir.1993) and Narragansett Indian Tribe v. Guilbert, 934 F.2d 4, 5 (1st Cir.1991)). See

also 18 U.S.C. § 3626(a)(1)(A) (“Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.”).

I need go no further than the first prong of the Ross-Simons of Warwick, Inc. factors. Hamlin has absolutely failed to show a likelihood of success on the merits on this claim of retaliation. He has no evidence that the prison officials have engaged in deliberate conduct to deprive him of his constitutional rights in retaliation for filing the underlying lawsuit related to medical care and treatment. In fact the evidentiary record presented to this court suggests that the prison officials have not only accorded Hamlin all of the due process applicable under their reasonable prison rules, but they have in fact compensated him for a pecuniary loss based upon his allegations. The notion that Worcester’s ill-advised comment at the grievance hearing is “evidence” of a massive conspiracy or some sort of confession that Worcester planted the marijuana is a bald, unsubstantiated assertion that simply does not carry the day, see Correa-Martinez v. Arrillaga-Belendez, 903 F.2d 49, 52 (1st Cir. 1990) (deferential reading of complaint does not require the crediting of “bald assertions, periphrastic circumlocutions, unsubstantiated conclusions, or outright vituperation.”), particularly in the context of a request for equitable relief.

Furthermore, enjoining prison officials from enforcing disciplinary sanctions imposed after due process grievance procedures have been followed could have a deleterious impact upon prison operations in contravention of the 18 U.S.C. § 3626(a)(1)(A) statutory directive. To the extent that Hamlin complains that the imposition of administrative segregation will result in further pecuniary losses in that items of personal property will be forfeited, Hamlin does not make a showing of irreparable harm as required under the second prong of Ross-Simons of Warwick, Inc. Should Hamlin ultimately succeed in amending his complaint to allege a claim for retaliation and should he ultimately prevail upon that claim (as indicated above, the likelihood of success on such a claim is none too apparent), those sorts of pecuniary losses would be recoverable despite the limitation imposed on prisoners by 42 U.S.C. § 1997e(e), a provision that only bars monetary claims for mental and emotional distress in the absence of physical injury.

Conclusion

Based upon the foregoing I recommend that the Court **DENY** the plaintiff's motion for temporary restraining order (Docket No. 31).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

March 19, 2004

HAMLIN et al v. PRISON HEALTH SERVICES,
INC et al

Assigned to: JUDGE JOHN A. WOODCOCK JR.

Referred to: MAG. JUDGE MARGARET J.
KRAVCHUK

Demand: \$

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 42:1983 Prisoner Civil Rights

Date Filed: 09/25/03

Jury Demand: Both

Nature of Suit: 550 Prisoner: Civil
Rights

Jurisdiction: Federal Question

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